or gaming-houses (Bac. Abr. *Nuis.* a; 10 Mod. 336), or where liquor was unlawfully sold (41 N. J. L. 6); but to apply the same doctrine to a business legalized by the legislature, duly licensed and properly conducted, in a suit where the only objections alleged were to the saloon itself, simply as a saloon, seems to be begging the question; yet the court proceed to do it. A brew-house has been held a nuisance, but always on the same ground as a lime-kiln, chandler's shop, or swine-sty (Waterman's Eden, 264, note), — that unwholesome odors were emitted. A stable is not a nuisance *per se* (36 Ala. 546), nor a tenpin alley, though kept in connection with a lager beer saloon (5 N. J. L. 158), nor a billiard room when conducted in an orderly manner. (8 Cow. 139.) In *Ffingst* v. *Senn*, (Ky.) 23 S. W. 358, where the complaint was that a picnic ground was a nuisance *per se*, the court said: "There can be beer-gardens and pleasure resorts, music and dancing, and yet no nuisance set up. Admittedly, the conduct of such exercise or the running of such a business may result in inconvenience and annoyance to neighbors not participating. It may render the location less eligible as a place of residence; . . . but, nevertheless these places and modes of amusement are not to be condemned or denounced as nuisances in themselves." Were there no other possible ground for the decision in the principal case, it might be inferred that the learned court thought it should take judicial notice of "all the incidents usually attendant upon such a place;" upon which incidents it laid great stress, but of which there was neither allegation nor proof.

The other, and at least more satisfactory view of the case is from a moral standpoint. The establishment of a liquor saloon in close proximity to one's dwelling would undoubtedly be a source of great annoyance and perturbation, and tend to render one's property in the vicinity less valuable to rent or sell. Even anti-prohibitionists might consistently object to such surroundings. It is not necessary for one to possess a "delicacy of taste or a refined fancy" to be disturbed by the sale of intoxicating liquors near one's residence; yet it is submitted that, where it is impossible to show any annoyance through the bodily senses, and where the only ground of complaint is that the defendants' trade is morally offensive and distasteful, the formerly established rule, as applied in *Wescott* v. *Middleton*, (43 N. J. Eq. 478), would not lead to the same conclusion as that reached in *Haggart* v. *Stehlin*.

Scope of the Power to Regulate Commerce. — The development at the hands of the courts of the power of Congress to regulate commerce has so frequently taken an unexpected turn, that one can never be sure that the last word has been spoken. In the case of *Swift* v. *Phila. Ry. Co.*, 58 Fed. Rep. 858, is a wholly new illustration of the wide-reaching nature of this power. The facts of the case are simple. The plaintiff began suit in the State court to recover for excessive charges paid for the carriage of goods from Chicago to New York. The case was removed to the Federal courts because of the diverse citizenship of the parties, and heard before Grosscup, J., who has since attracted attention by other rulings on the Interstate Commerce Act. In a short opinion he held that the action would not lie, — that although the general rule of the common law forbade a common carrier to exact unreasonable charges, yet this rule could have no application to an interstate law, that being

a matter for the exclusive regulation of Congress. The court go on to say that "the fixing of a rate for the carriage of goods from one State to another is not simply an incident of, or appurtenance to, commerce, but is the very core and essence of interstate commerce. A rate for the carriage of interstate commerce, dependent, as it is, for its reasonableness upon so many different considerations of expenditure, business, and interpretations of the laws of different States, is essentially a national affair, and its regulation is, therefore, exclusively national." The reasoning of the court will be seen to follow the test suggested by Mr. Justice Curtis, in *Cooley* v. *Wardens*, 12 How. 299, that where a subject admits only of a uniform rule there the power of Congress is exclusive.

The decision, it is believed, is entirely novel in holding that the commerce clause renders inoperative a rule of the common law which would otherwise be in force in the States. Obviously, this was the only decision possible if no distinction can be drawn between statutory laws and rules of the common law. For, on the authority of *Wabash Ry.* v. *Illinois*, 118 U. S. 557, it must be conceded that a statute of a State requiring an interstate carrier to exact reasonable charges only, would be unconstitutional. But if a statute declaratory of a rule of the common law is unconstitutional, it is not easy to see how the rule itself can stand. On the other hand the doctrine of the later cases has been, not that the Constitution *ex proprio vigore* forbids such State laws, but that the Constitution has entrusted the whole matter to Congress, and the silence of Congress is indicative of its wish to have such commerce free from State regulations (see *Bowman* v. *Ry. Co.*, 125 U. S. 465, and *Wilkerson* v. *Rahrer*, 140 U. S. 545). So, while it may be true that the silence of Congress is expressive of its wish that a State shall not legislate on the subject, it is a somewhat stronger proposition that the non-action of Congress indicates its desire to have all the existing common law on the subject abrogated. Perhaps something more than mere silence should be required to annul a State law existing at the time of the adoption of the Constitution.

The provision of the Interstate Commerce Act of 1887, that all charges shall be reasonable and just, alters the nature of the question. But the decision is on broader grounds, and its interest comes from its bearing on the general question apart from legislation by Congress.

If the principle be sound it would seem to follow that no action could be brought in a State court, when the haul is an interstate one, for refusal to carry goods, or for negligence in not delivering promptly. Again, at common law the liability of a carrier to account for goods received for carriage is absolute. Yet if this decision be sound it is not easy to see how a State court can properly entertain an action against a carrier for goods lost in an interstate transit. Surely the liability assumed by an interstate carrier is a matter exclusively national within the rule. Similarly the actions which have always been allowed against telegraph companies for errors in transmission, and for non-delivery of messages, would seem to be wrong where the communication is between points in different States.

These results are not suggested for the purpose of throwing doubt on the correctness of the decision. The whole subject is in such a condition that much must be left to speculation. More than once the established landmarks on the subject have been swept away by the necessary development of this branch of the law. This case may be the first step in a further curtailment of State authority.